

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL JOHNSON,  
Plaintiff,

v.

LT. J. MATA, et al.,  
Defendants.

No. 2:22-cv-0613 DAD KJN P

ORDER

Plaintiff, a federal inmate formerly housed at the Federal Correctional Institution in Herlong, California (“FCI Herlong”), filed this pro se civil rights action pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). On April 10, 2023, the district court granted defendants’ motion to dismiss plaintiff’s first amended complaint without leave to amend as to the Fifth Amendment claim, and with leave to amend as to the Eighth Amendment claim. (ECF No. 61.) On April 12, 2023, the district court appointed counsel to represent plaintiff for the limited purpose of determining whether or not the filing of an amended complaint is appropriate. (ECF No. 62.)

On August 24, 2023, plaintiff’s counsel filed a notice that filing an amended complaint would not be appropriate, she will not be filing an amended complaint, and requested leave to be relieved from her appointment. (ECF No. 67.)

Good cause appearing, counsel’s motion to be relieved as counsel of record is granted.

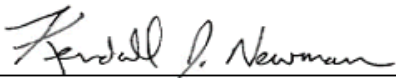
1 The parties are advised that this court makes no findings as to counsel's investigation and  
2 decision not to file an amended complaint, and this order shall not be construed as such. Rather,  
3 at this point, plaintiff has two options. Plaintiff may choose to file a pro se second amended  
4 complaint limited to the Eighth Amendment grounds identified in the district court's orders  
5 attempting to state a legally cognizable claim. (ECF Nos. 61, 62.)<sup>1</sup> Or, plaintiff may choose to  
6 voluntarily dismiss his Eighth Amendment claims without prejudice.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Counsel's motion to be relieved as counsel for plaintiff (ECF No. 67) is granted;
- 9 2. The Clerk of the Court is directed to terminate counsel's representation and return  
10 plaintiff to pro se status; and
- 11 3. Within thirty days from the date of this order, plaintiff shall file the appended Notice of  
12 Election form. If plaintiff chooses to amend, he must also provide his proposed second amended  
13 complaint limited to the Eighth Amendment grounds identified in the district court's April 2023  
14 orders (ECF Nos. 61 & 62).

15 Plaintiff is cautioned that failure to comply with this order will result in a recommendation  
16 that his Eighth Amendment claims be dismissed without prejudice, and this action be terminated,  
17 and judgment entered.

18 Dated: September 1, 2023

19   
20 KENDALL J. NEWMAN  
21 UNITED STATES MAGISTRATE JUDGE

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27 <sup>1</sup> By signing an amended complaint, plaintiff certifies he made reasonable inquiry and has  
28 evidentiary support for his allegations, and for violation of this rule the court may impose  
sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

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NOTICE OF ELECTION

Plaintiff elects to proceed as follows:

\_\_\_\_\_ Plaintiff opts to file a second amended complaint limited to the Eighth Amendment claims identified in the district court's April 2023 orders (ECF No. 61 & 62), and the proposed second amended complaint is appended.

**OR**

\_\_\_\_\_ Plaintiff opts to dismiss the putative Eighth Amendment claims without prejudice.

DATED:

\_\_\_\_\_  
Plaintiff